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SISTER RULE PROPERTIES LLC & WYNNE WYNNE SITUATION PROPERTIES LLC, Housing Providers/Petitioners v. TENANTS OF 1940 BILTMORE ST., N.W., Tenants/Respondents	Case No.: RH-SR-07-20110

FINAL ORDER

I. Introduction

On March 28, 2007, Petitioners Sister Rule Properties, LLC and Wynne Wynne Situation Properties, LLC (the "Owners" or "Housing Provider"), filed a petition for substantial rehabilitation of a 24 unit apartment building at 1940 Biltmore Street, N.W. (the "Building"). The Owners propose to spend over $2,500,000 to make needed structural repairs and renew the building's mechanical, plumbing, and heating systems, among other upgrades. The project would require tenants to vacate the building for four to six months. The petition proposes to allow the Owners to increase the individual tenant rents by up to 125%.

Respondents, the Building tenants ("Tenants"), through their tenant association (the "Tenant Association") opposed the petition.[1] At a hearing on November 6 and 7, 2007, the

[1] Throughout this Final Order I will use "Tenants" with a capital "T" to refer to the Tenant Association and Building tenants in their capacity as a party to this litigation. I will refer to "tenants"

Owners called five highly qualified experts and the Owners' managing partner, who testified, without serious contravention, that the proposed rehabilitation was necessary to keep the building from deteriorating further. Five of the Building's 22 tenants testified, without serious contravention, that the Building was habitable in its present condition, repairs could be made on an as needed basis, the proposed rehabilitation would inconvenience all the tenants, and that many of them could not afford the potential increased rents.

The record presents a quandary in statutory interpretation. To approve a petition for substantial rehabilitation the Administrative Law Judge must find that the project is "in the interest of the tenants." D.C. Official Code § 42-3502.14(a). Here Tenants assert, without dissent, that the project is not in their interest. On the other hand, the Rental Housing Commission has ruled, with approval from the Court of Appeals, that a landlord "faced with an older building suffering from deterioration" has "the right to substantially rehabilitate those portions that reasonably and fairly require it," and that "the interest of the tenants . . . is only one factor to be balanced against the right of the landlord to the use and improvement of his property." *Tenants of 738 Longfellow St., N.W. v. D.C. Rental Hous. Comm'n,* 575 A.2d 1205, 1215 (D.C. 1990). Because we are obligated to follow the Rental Housing Commission's interpretation of the Rental Housing Act, and the Court of Appeals has not found the Commission's interpretation to be contrary to the plain language of the Act, I will grant the petition, with certain modifications noted below.

II. Findings of Fact

A. Background

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with a lower case "t" to refer to the Building tenants in their capacity as tenants in the Building.

The Housing Accommodation is a 24 unit apartment building located within the Kalorama Triangle Historic District. It was built in 1913 and was advertised as a "high class" apartment house with "[e]xtra large rooms," and a "[m]agnificent view over Rock Creek valley." Petitioner's Exhibit ("PX") 100, Tab 10 (Building History).[2]

From 1955 until his death in 2005, the building was owned by Frederick P. Mascioli, who occupied two apartments on the sixth floor. PX 100, Tab 10 (Building History); PX 100, Tab 2 (Vacancy Schedule). Mr. Mascioli made repairs to the building as circumstances required but did not undertake any significant renovations or capital improvements. Window unit air conditioners were installed in the apartments. Although circuit breakers replaced fuse boxes, apartments continued to be wired at the original 60 amp capacity and the Building retained most of the original wiring. A new boiler for the steam heat system was installed in 1991, but the steam pipes were not replaced. Plumbing repairs were made when required and appliances replaced when they broke down.

Although the former owner made no major upgrades to the Building, there was no evidence that Mr. Mascioli deliberately neglected the property or failed to make repairs that were needed. Indeed, the five tenants who testified seemed to agree that Mr. Mascioli responded appropriately to specific complaints for maintenance and urged a continuation of this approach as an alternative to the present Owners' proposal for substantial rehabilitation.

Following Mr. Mascioli's death the building was purchased by the current owners, Sister Rule Properties LLC and Wynne-Wynne Situations Properties, LLC (the "Owners"). PX 100, Tab 2 (Notice of Change of Ownership). These LLC's are controlled by a partnership whose managing partner, Steven Schwatt, testified at the hearing.

[2] A list of the exhibits offered and received in evidence is set forth in Appendix A to this Final Order.

The assessed value of the Building for Tax Year 2007 is $1,869,800. PX 100, Tab 2 (Tax Bill). Fifty percent of this figure, the amount necessary to justify a substantial rehabilitation under the Housing Regulations, is $934,900. 14 DCMR 4212.8(b).

B. The Petition

On March 28, 2007, the Owners filed the present Petition for Substantial Rehabilitiation, (SR) 20,110. The Owners propose to spend $2,581,453 to restore and upgrade the Building. PX 100, Tab 11 (Cost Summary). The renovation would include rewiring of the Building, installing new piping and plumbing, replacing the appliances and kitchen cabinets in each of the units, replacing the steam heat radiators and window air conditioners with individual HVAC modules in each apartment, replacing toilets, tubs, sinks, and vanities in each bathroom, removing asbestos and lead paint from the units and the common areas, painting, installing or preserving flooring in the units, replacing the roof, repairing the balconies, upgrading the Building stairwells, and installing a new security system.

The present rents charged to the Building tenants range from $676 to $3,000.[3] If the Petition is approved, the Owners seek the right to increase rents in each of the Building's 24 apartments by 125%. The new rents, if approved, would range from $845 to $6,750. PX 100, Tab 2 (Rent Adjustment Schedule).

C. Tenants' Position

Tenants in 19 of the 22 occupied units in the Building belong to the Biltmore Tenants Association. The Tenant Association agrees that certain repairs and renovations totaling

[3] The $3,000 rent is the present asking price of the vacant apartments that Mr. Mascioli occupied. PX 100, Tab 2 (Rent Adjustment Schedule). The record does not reflect how this amount was set or whether the Owners complied with the requirements of the Rental Housing Act in establishing the rent for units that were no longer exempt from rent control. *See* D.C. Official Code § 42-3502.09(b).

$676,180 are needed to make the building safe and habitable for the tenants. The Tenant Association does not contest the following items proposed in the Owners' Petition:

Plumbing/HVAC: $134,400 (replacement of the water line into the Building; new condensation and supply lines for individual units).

Masonry: $115,000 (exterior tuck pointing and repair of unit balconies).

Metals: $45,000 (repair of interior stairways to comply with current fire code).

Roof: $45,000 (replacement of roof).[4]

Electrical: $222,000 (upgrade service to the building and to individual units; install new lighting in stairwells; install security entry system).

General: $4,800 (unit cleaning).

General Requirements: $109,980 (project manager, assistant, plans and drawings, permits, dumpster, etc.).

Tenants contest the Owners' remaining proposed work estimated to cost $1,905,273. Tenants contend that the Owners' plans to reconfigure and upgrade the unit bathrooms and kitchens, remove and restore the floors, paint, and install a new HVAC system, among other projects, are unnecessary and not in the interest of the tenants.

[4] Tenants also do not dispute that the balustrades along the roof need repair. The Owners proposed to repair the balustrades in the petition and their witnesses testified about the need for repair. But the Owners did not include a cost estimate in the petition and the witnesses did not give a cost estimate. See PX 100, Tab 11 (Cost Summary). In their post-hearing memorandum, the Owners attached a spreadsheet that showed a cost estimate of $74,000 for repair of the balustrades. Pet'rs' Post Hearing Mem., Ex. A. The spreadsheet is not in evidence and therefore I have not included the cost of balustrade repair in my analysis.

The parties have stipulated that the Owners have satisfied the pre-inspection filings requirements of D.C. Official Code § 42-3502.08(b). I also find that the Owners have satisfied the notice requirements of 14 DCMR 4212.7. *See* PX 100, Tab 2 (Notice of Increase).

D. The Condition of the Building

The Owners called five expert witnesses to testify in support of the petition and to describe the condition of the Building. Tenants did not call any experts to contravene their testimony, although the tenants who testified described the condition of the Building and often disagreed with the experts' opinions.

The Building was constructed in 1913 in accord with the state of the art as it existed at that time. It has since undergone limited repairs and maintenance, but it has never been subject to major rehabilitation or the complete upgrade of any of its systems.

The electrical system in the Building contains much of the original wiring and provides a capacity of only 60 amps per unit. The system is inadequate to service the needs of modern appliances such as computers, microwaves, and hair dryers. Housing Provider's experts testified that upgrade to at least 100 amps per unit was required to conform to modern standards. The petition proposes an upgrade to 150 amps per unit. PX 100, Tab 6 (MEP Letter). Tenants do not contest that the electrical system in the building and the wiring is inadequate and needs to be replaced.

The plumbing system contains much of the original 1913 piping. The original galvanized piping has long exceeded its useful life and is prone to frequent failure. Tenants agree that much of the piping in the building and the individual units needs to be replaced.

The building is heated by steam heat using most of the original steel piping servicing radiators in the individual units. The boiler was replaced in 1991. The system provides adequate heat to the individual units but it is uneven, cannot be controlled by the individual tenants, wastes energy, and is prone to periodic breakdowns.

The building is air conditioned by individual window units. These are inefficient. The kitchens and bathrooms in the units are not ventilated. There is no air conditioning in the halls.

Tenants do not dispute that the Building needs significant structural repairs. These include tuck pointing of the brick work, replacement of the roof, repair of the unit balconies and replacement of railings that do not meet the current code, repair of concrete balustrades at the roof line, and replacement of the building's three fire egress stairwells.

Tenants also agree that the security system in the Building is outdated and needs replacement.

Potential environmental hazards exist because the Building was constructed before the dangers of lead paint and asbestos were recognized. Some of the pipes in the basement are lined with asbestos that is potentially friable — capable of being inhaled. In addition, many of the kitchen floors were covered at one time with tile that contained asbestos, although the tile has since been covered over with vinyl or other non-hazardous flooring. The asbestos does not pose an imminent danger because it cannot be inhaled. But it would be dangerous to remove tiles containing asbestos while tenants occupied the apartments.

The use of lead paint in the original construction poses a similar problem. The kitchens, bathrooms, and woodwork of most of the apartments contain coats of lead paint that has since been painted over. The lead paint is not hazardous to the tenants so long as it is not disrupted,

but it would pose a serious health risk if the walls or ceilings were broken open to access pipes and electrical lines.

The appliances and bathroom fixtures in the individual units vary in age and condition. Some of the units have dishwashers, but most do not. Many of the appliances and fixtures have exceeded their useful life, although the current and former owners have replaced broken equipment as needed. The building has no laundry facilities. Residents must walk through the parking lot to use the laundry room in an adjacent building.

The building permits for the proposed rehabilitation were issued in September, 2007. PX 100, Tab 1; PX 106. *See* 14 DCMR 4212.8(c).

E. Tenant Relocation During Repairs

Owners estimate that their proposed renovations would require tenants to vacate their units for four to six months. Owners propose to rehabilitate the Building's four tiers one tier at a time, so that no more than six units would have to be vacant at any given time.[5] Although Tenants would receive relocation allowances of $300 per room, I accept the testimony of tenants Tuten, Evans, White, Reynolds, and Gardner that relocating would be extremely inconvenient and costly.[6]

The work that Owners propose, including complete renovation of the kitchens and bathrooms and installation of a new HVAC system, could not be accomplished unless the tenants

[5] The wiring and piping for the apartments runs vertically through each of the four six-story "tiers," in the building. The plumbing and electrical supply to each tier can be shut off without disrupting tenants in the other tiers.

[6] In their post-hearing memorandum the Owners asserted that they were prepared to provide temporary housing to the evicted tenants at rents no greater than the tenants were paying for the units they vacated. There was no testimony or other evidence in the record for this assertion.

vacated their units for an extended period of time. Although Tenants contend that the less intrusive electrical and plumbing repairs that Tenants do not dispute could be accomplished without forcing the tenants to vacate their units, based on the expert testimony, I find that it would be both dangerous and impractical to undertake these substantial plumbing and electrical updates while tenants remained in their units. I accept the testimony of the Owners' managing partner, Mr. Schwatt, George Cranford, a master plumber and HVAC technician, and Charles Szollosy, a mechanical and electrical consulting engineer, on this point. Renewal of the plumbing and electrical systems will require extensive work behind the present plaster walls to locate and replace pipes and wiring. It would be very difficult, if not impossible, to accomplish the work on a piecemeal basis while preserving the walls intact. The preferred approach is the one that Owners propose, to demolish the present walls, replace the wiring and plumbing, and then install new drywall after the systems have been renovated.

Even the limited repairs that Tenants concede to be necessary would require that the electricity and plumbing in the individual tiers be shut down for extended periods of time. It would also require that large parts of the walls be removed to gain access to the systems. An apartment without walls, electricity, or plumbing is not fit for occupancy. In addition, environmental hazards preclude Tenants from staying in their apartments while renovation proceeds. Mark Veckman, Jr., a chemical engineer who testified on behalf of Housing Provider, explained that the presence of lead paint and possibly asbestos in the units would pose a serious health hazard to tenants if they continued to live in the units while work was underway. His testimony was uncontroverted.

I also accept the testimony of the Owners' experts and managing partner that the building will continue to deteriorate significantly without a substantial rehabilitation. Even if the repairs

that Tenants do not contest were performed, the building would still struggle with old and inefficient systems for heating and air conditioning, old appliances and bathroom fixtures, steam piping that could fail, and aged, distorted balcony doors.

F. Building Habitability

Although the extensive renovations proposed by the Owners would upgrade the Building to standards comparable with new construction and would add to the tenants' comfort and convenience once renovation was completed, only the proposed upgrades that Tenants do not contest would have a significant impact on the tenants' health, safety, or welfare. The uncontested repairs account for most of the serious dangers to the tenants health and safety that now exist in the Building. Specifically, these repairs would minimize the danger of fire due to an electrical malfunction, improve the safety of the exit stairwells in the event of fire, reduce the danger of water leakage through the roof or the building masonry, and reduce the likelihood of water pipes breaking and causing a flood. While tenants would benefit from the other repairs that Owners propose, such as installation of a new HVAC system, new kitchen cabinets, and new bathroom fixtures, the contested repairs, for the most part, are not necessary to remove threats to the tenants' health and safety and most of the tenants are opposed to them.

Neither party contended that the proposed substantial rehabilitation was necessary to correct serious housing code violations. The Building was inspected in February 2007 by inspectors from the Department of Consumer and Regulatory Affairs. They found numerous minor housing code violations in the tenants' apartments. PX 100, Tab 2 (Housing Inspection Reports). But there was no evidence that any violations were present at the time of the hearing or could not be corrected by ordinary maintenance and repair.

I accept the testimony of tenants Tuten, Reynolds, and Gardner that they could not afford to stay in the building if the Owners were to increase their rent by 125%, the amount Petitioners request. I also accept the testimony of tenants White and Evans that a 125% rent increase would be an extreme hardship that might force them to vacate the Building. I find that most or all of the tenants would prefer to limit the repairs to the ones that Tenants have not contested and thereby avoid the high rent increases that would be permissible for the renovations that the Owners propose.

G. Evaluation of the Proposed Work

The District of Columbia Administrative Procedure Act requires findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact. D.C. Official Code § 2-509(e); *see Tenants of 738 Longfellow Street, N.W. v. Estate of Vito*, SR 10,102 (Apr. 16, 1986) at 11, *aff'd*, *Tenants of 738 Longfellow Street, N.W. v. D.C. Rental Hous. Comm'n*, 575 A.2d 1205 (D.C. 1990). The process involves distinguishing renovations that "benefit" the tenants from "cosmetic improvements with little or no benefit to the tenants." *Id.* at 6. Because Tenants raised specific objections to most of the Owners' proposals, I will evaluate each of the proposals in turn.

Demolition ($70,000). This work primarily involves removing the walls in the individual units and some common areas to access the plumbing lines and electrical wiring. Tenants oppose this expense as unnecessary and urge that the work can be done on a piecemeal basis by cutting holes in the walls of individual units and, in many kitchens, accessing the lines from cuts in the adjacent apartment. For reasons I discussed above, I find that Tenants' proposal is impracticable, that demolition is necessary, even for the renovations that Tenants do not contest, and that it would benefit the tenants. A modest portion of the demolition expense, $10,000, is

allocated for work in the Building basement where the Owners propose to install individual storage lockers in a room that is now used for unsecured storage. Although this expense may not be necessary, I find it would nevertheless provide a significant benefit to the tenants.

Masonry ($115,000.) Tenants do not oppose this work and I find it would benefit them.

Carpentry ($117,800). Owners propose to reconfigure the present kitchens and install new subfloors, cabinets, and counter tops. They also propose to install vanities in the bathrooms. Tenants oppose these expenses as unnecessary. Tenants are correct that, with the possible exception of the replacement of the kitchen floors, these improvements do not address a threat to tenant health or safety. But I find that they would benefit tenants by replacing old and deteriorating accessories with new and improved ones. Moreover, although the Owners' witnesses may have exaggerated the extent to which the plumbing and electrical work would damage and disrupt the existing kitchen and bathroom furnishings, I find that it is reasonable for Owners to replace the old fixtures at a time when the kitchens and baths would be disturbed in any event.

Roof ($45,000). Tenants do not contest this expense and I find it would benefit them.

Windows and Doors ($44,400). Owners propose to renew the French doors to the balconies in each unit to weatherproof them, install thermal glass, and ensure that they fit properly. Tenants oppose this work as "an aesthetic issue, designed to attract new tenants." I find that this work would benefit the tenants. In addition to improving the appearance of the individual units, it would improve the Building's energy efficiency and deter weathering and water damage.

Drywall ($118,000). Following demolition of the current plaster lath walls Owners propose to replace them with drywall. Tenants oppose this expense for the same reason they opposed the demolition. I find it is a necessary expense and a benefit to the tenants for the same reason that I found the demolition was necessary. Even if work were limited to plumbing and electrical repairs that Tenants do not contest, substantial demolition would be required and drywall would then be needed to restore the walls that had been demolished.

Floors ($277,000). Owners propose to renew and replace the flooring in the units and the common areas. The cost would include repair of the lobby and hall floors, refinishing hardwood floors in the individual units, and removing the floors in the kitchens and bathrooms to replace them with new tile floors. Tenants oppose this expense as unnecessary. Although the old floors do not pose an immediate threat to tenant health and safety, I find that new floors would be a significant benefit to the individual tenants. Asbestos tiles under the kitchen floors would be removed, eliminating a potential health hazard. Hardwood floors, some of which have seriously deteriorated, would be refinished and protected. Both the kitchen and bathroom floors would be significantly upgraded.

Paint ($129,000). The Owners propose to paint the lobby, hallways, elevator, and all the units. Tenants submit that painting should be undertaken as routine maintenance on an as-needed basis. I find that the tenants will incur a significant benefit from having the apartments and common areas repainted. Mr. Veckman testified that most of the units had been painted with lead paint at one point that could pose a health hazard if it peeled or flaked. This hazard would be removed if the units were stripped and repainted as Owners propose. In addition, repainting would significantly improve the appearance of all the units and significant painting would be necessary in any case following the repairs to the plumbing and electrical systems.

Specialities ($50,000). This proposal has two components: $10,000 for new storage lockers for the tenants in the basement and $40,000 for "decorating and accessories" in the lobby. I have found that the storage lockers would benefit the tenants by providing each unit with a place for secure storage. On the other hand, I find the Owners have not demonstrated that the proposed lobby decoration expenses would benefit the tenants. While obviously tenants would enjoy some benefit from improved lobby decorations, Owners have not shown why an expense of $40,000 is required or why the proposed additions are not purely cosmetic.

Equipment ($149,100). Owners propose to replace the refrigerators and ranges in each kitchen, add or replace dishwashers, and install washers and dryers, microwaves, and a wine cooler. Tenants oppose the expense as unnecessary. I find that, with the exception of the wine cooler, these items would be a significant benefit to the tenants. Testimony at the hearing established that some of the appliances in the units were extremely old, although still functional. The addition of a washer and dryer would be a substantial convenience to tenants since the Building now has no laundry facilities. On the other hand, the wine coolers, budgeted at $11,200, would not be a significant benefit to most of the tenants. This is a luxury item that is inconsistent with the needs or expectations of the majority of tenants in the Building.

Plumbing ($391,000). As discussed above, Tenants do not contest $134,400 of proposed expenses for replacement of the water line into the Building and new condensation and supply lines for individual units. They contest the remaining $256,700 as unnecessary. The difference between Owners' and Tenants' proposals primarily involves the cost of installing a new HVAC system and the cost of new tubs, sinks, faucets, and ventilators in the bathrooms, all of which Tenants oppose. Again, I find that the Owners' proposal, while not necessary for tenant health and safety, will provide significant benefits to the tenants. I accept the testimony of Owners'

master plumber that the building's heating and air conditioning systems are outdated and need replacement. The present system of steam heat and window air conditioners is inefficient, expensive, and a profligate waste of energy. The pipes that carry the steam throughout the Building are nearly 100 years old, posing the risk of a failure that could cause major damage or personal injury. Parts are difficult to replace and many of the radiator valves are inoperative. Although Tenants characterize the proposed relining of fireplace flues as a "luxury item," the president of the Tenant Association cited chimney cleaning as required maintenance in a letter November 16, 2006. PX 100, Tab 9 (Resident Letter III). The Owners have since prohibited the residents from using their fireplaces because of the risk of fire due to cracks in the chimney lining.

New bathroom fixtures and ventilation in the baths would also benefit the tenants. The old toilets in the Building use much more water than their replacements will. The log of tenant complaints reflects many reports of malfunctions with the bathtubs, showers, sinks, and toilets. PX 108. The addition of ventilators will reduce humidity and conform the bathrooms to modern standards.

Electrical ($278,500). Tenants contest $56,500 of Owners' proposed upgrades for lighting in the unit rooms, closets, kitchens, and baths, and electric heaters in the kitchens. Tenants submit that these items "are a part of the massive luxury upgrade designed to refurbish the Property into a luxury accommodation for new tenants, and have nothing to do with the interests of the current tenants." While there is no evidence that these upgrades are necessary to the tenants' health or safety, I cannot agree that they are a luxury accommodation of no benefit to the current tenants." The lighting system in most of the units was designed nearly a century ago.

Tenants will benefit from modern technology that is more convenient, easier on the eyes, and energy efficient.

Parking and Cleaning ($14,800). Tenants do not object to the $4,800 cost of cleaning the building. But they protest the expense of $10,000 to resurface the parking area and relocate a dumpster. I find this is not a legitimate expense because the managing partner testified that parking was not included in the tenants' rent and was subject to separate contract. *See Tenants of 738 Longfellow St. v. Estate of Vito,* SR 10,012 (RHC Feb. 10 1989) at 5.

Added Bath Option ($128,750). Tenants object to Owners' proposal to install an additional bath in some of the units as "not something desired, expected, or in the interest of the current tenants. I agree with tenants that the bath option is not an appropriate element of a substantial rehabilitation. Although the added bath would benefit the tenants who receive this option, it would have no benefit to the other tenants. Moreover, the addition would change the essential character of the units, going beyond the scope of restoration and upgrade encompassed in a substantial rehabilitation.

General Requirements ($109,980). This item includes the cost of a project manager and assistant, phone, fax, computer, permits, plans and drawings and a dumpster. Tenants do not object to any of the specific items and I will allow them.

Contingency Fee ($203,345). Tenants object to this budget expense as speculative. But Tenants did not controvert the testimony of Owners' managing partner that the 10% contingency fee was necessary to provide for the likelihood that the contractor would encounter unexpected expenses once the work got underway. I will allow the contingency fee but will reduce it to 10% of the allowed costs.

General Contractor's Fee ($117,339); Construction Manager's Fee ($117,339). Tenants also question these fees on the grounds that they are duplicative and there is no testimony to support their reasonableness. The testimony of Owners' managing partner about these two items was perfunctory, asserting that the fees were reasonable and necessary but giving little detail about the scope of work encompassed in each of the fees. Moreover, the documentary support for the Petition, PX 100, does not contain a contract for either the general contractor or the construction manager.

I will allow the fee for the general contractor because it is a necessary component of any construction project and Tenants did not challenge the reasonableness of the 5% figure. On the other hand, I agree that Owners have not sustained their burden to prove that the services of a construction manager were necessary in addition to those of the general contractor or to explain what the construction manager would do that the general contractor could not do. *See Tenants of 738 Longfellow St., N.W. v. Estate of Vito*, 575 A.2d 1205, 1211 (D.C. 1990) (concluding that there was insufficient evidence to support the hearing examiner's finding that the proposed general contractor's fee was justified). I will reduce the allowance for the general contractor's fee to 5% of the allowable costs.

H. Total Cost of Improvements That Benefit Tenants

Based on my findings above, I compute the cost of improvements that benefit the tenants as follows:

Renovation	Owners' Proposed Cost	Tenants' Proposed Cost	Contested Costs	Allowed Costs
Demolition	$70,000	$0	$70,000	$70,000
Masonry	$115,000	$115,000	$0	$115,000
Metals	$45,000	$45,000	$0	$45,000
Carpentry	$117,800	$0	$117,800	$117,800

Renovation	**Owners' Proposed Cost**	**Tenants' Proposed Cost**	**Contested Costs**	**Allowed Costs**
Roof	$45,000	$45,000		$45,000
Windows & Doors	$44,400	$0	$44,000	$44,000
Drywall	$118,000	$0	$118,000	$118,000
Floors	$277,000	$0	$277,000	$277,000
Paint	$129,000	$0	$129,000	$129,000
Specialities	$50,000	$0	$50,000	$10,000
Equipment	$149,100	$0	$149,100	$149,100
Plumbing	$391,100	$134,400	$256,700	$391,100
Electrical	$278,500	$222,000	$56,500	$278,500
General	$14,800	$4,800	$10,000	$4,800
Bath Option	$128,750	$0	$128,750	$0
General Reqirements.	$109,980	$109,980	$0	$109,980
Contingency	$203,345	$0	$203,345	$195,338
General Contractor Fee	$117,339	$0	$117,339	$97,669
Construction Manager Fee	$117,339	$0	$117,339	$0
Total	$2,581,453	$676,180	$1,905,273	$2,246,387

I. The Loan Agreement

The Owners' have obtained a loan commitment in the amount of $8,000,000 to finance the proposed substantial rehabilitation in addition to another project. PX 100, Tab 13. The commitment is good through March 30, 2008. PX 107. The commitment letter provides for interest at the rate of Libor [London Interbank Offered Rate] + 2.75% for a term of 36 months and requires no payment of principal until the due date. The commitment letter describes the amortization provisions of the loan as: "None, interest only." Housing Provider has paid interest at the rate of 8.07% on an outstanding loan. Stipulation Concerning Loan Interest Payments filed Nov. 19, 2007.

III. Conclusions of Law

A. The Interest of the Tenants

The Findings of Fact above are a necessary prelude to determine whether "the landlord has met the burden of showing that the project is in the interest of the tenants." *Tenants of 738 Longfellow St., N.W. v. Estate of Vito*, SR 10,012 (RHC Apr. 16, 1986) at 9. The Rental Housing Act directs that the Administrative Law Judge shall consider, "among other relevant factors:"

> (1) The impact of the rehabilitation on the tenants of the unit or housing accommodations; and
>
> (2) The existing condition of the rental unit or housing accommodation and the degree to which any violations of the housing regulations in the rental unit or housing accommodation constitute an impairment of the health, welfare, and safety of the tenants.

D.C. Official Code § 42-3502.14(c).

If these were the only considerations for me to weigh I would be compelled to disallow almost all of the proposed renovations except those that Tenants concede are in their interest. The Tenants all agreed that the impact of the renovation on them would be negative because their rents would increase substantially and because they would have to move out of their units while the renovations proceeded. The repairs that Tenants do not contest are the only ones I find to be necessary for their health and safety. Although even these repairs would inconvenience the tenants and require them to vacate their units for a period of time, they would be less intrusive than the renovation the Owners propose and the cost would be less burdensome to tenants, even if the Owners were able to pass all of the costs through to them.

However, the Court of Appeals has approved the Rental Housing Commission's determination that the interest of the tenants is not the only consideration to be weighed in the consideration of a substantial rehabilitation petition. Rather, it is one factor "to be balanced against the right of the landlord to the use and improvement of the property." *Longfellow*, 575 A.2d at 1215 (quoting *Tenants of 738 Longfellow St., N.W. v. Estate of Vito,* SR 10,013, (RHC Apr. 16, 1986) at 9.)

Guidance on how to conduct this balancing test is elusive. The *Longfellow* case, now seventeen years old, is the Court of Appeals' only decision on substantial rehabilitation. There have been no significant decisions on point from the Rental Housing Commission since then. *Longfellow* contains contradictory pronouncements that are hard to interpret in light of the facts and outcome of the case.

Many of the court's observations in *Longfellow* seem to demand a strict application of the tenant interest requirement. Thus, the Court of Appeals asserted that "[e]xemptions from coverage of the rent control statute are to be narrowly construed," and the provision for

substantial rehabilitation "ought to be given a parsimonious interpretation rather than an expansive one." *Id.* at 1211. Moreover, the court held that, unless it was found that the conditions in a building were "a danger to the tenants' health, safety and welfare which cannot be remedied without major renovations," "it will be very difficult indeed for the landlord to establish that substantial rehabilitation, with its concomitant rent increases, is in the best interest of the incumbent tenants." *Id.* at 1213-14.

Notwithstanding these admonitions, the *Longfellow* court approved the Commission's determination that the tenants' interest must be balanced against the Housing Provider's right to improve the property and to "substantially rehabilitate those portions that reasonably and fairly require it." *Id.* at 1215. The court concluded that "it is sufficient for the landlord to show that the proposed rehabilitation is in the tenants' interest in the sense that they receive a benefit, and that the renovations are necessary to correct or improve the condition of the property." *Id.*

To interpret these Delphic pronouncements in the context of the present petition, I will follow the precept that decisions of the Rental Housing Commission "must be read in the context of the facts presented in those cases." *Redmond v. Majerle Mgmt., Inc.*, TP 23,146 (RHC Mar. 26, 2002) at 8 (quoting *Cafritz v. D.C. Rental Hous. Comm'n*, 615 A.2d 222, 228, n.5 (D.C. 1992). The facts of the *Longfellow* case indicate that a housing provider has a right to upgrade an older building to modernize its structure and utilities and install up-to-date equipment even though the tenants' health and safety are not in danger and the tenants are opposed to the venture.

The *Longfellow* facts are similar to the facts here. The *Longfellow* owners sought to modernize a building that was less than half the age of the Building here. 575 A.2d at 1209. The owner proposed a plan to remodel each kitchen, including the installation of new light fixtures, cabinets, and appliances, and to add new sinks, vanities and medicine cabinets to the bathrooms.

Tenants opposed most of these proposals on grounds that the court characterized as "if it ain't broke, don't fix it." *Id.* at 1210. But the Commission and the court approved the replacement of kitchen countertops and cabinets based on the hearing examiner's finding that they would benefit the tenants because they were "generally in a state of disrepair and have exceeded their normal useful life." The installation of vanities in the bathroom was "justified by the resulting improvement to the appearance of the bathrooms and improved storage space." Replacement of floor coverings was justified on the grounds that "aged tile" needed replacement. *Id.* at 1217.

In light of this analysis I conclude that the renovations I have approved are appropriate for a substantial rehabilitation petition and "in the interest of the tenants" as the term has been interpreted by the Rental Housing Commission and the Court of Appeals, even though Tenants oppose most of the renovations, most of the renovations address circumstances that do not pose a health or safety hazard to tenants, and the increased rents that Housing Provider seeks permission to impose would constitute a significant hardship for many of the tenants. The approved renovations will allow Housing Provider to install up-to-date systems and equipment that are now the state of the art and thus to maintain the Building in a manner that is consistent with modern standards and the lifestyle of the tenants for whom the Building was originally built.[7]

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[7] Housing Provider's post-hearing memorandum quotes at length from the Rental Housing Commission's decision in *1841 Columbia Rd. Tenants Assoc. v. 1841 Columbia Rd. Ltd. P'ship,* CI 20,082 (RHC May 12, 1989), for the proposition that "[i]n adopting the rent control scheme, the D.C. Council was . . . aware of the interest of housing providers as well as that of the general public in rental housing . . . ." *Id.* at 5-6. While the decision lends some support to Housing Provider's argument that the tenants' interest must be balanced against those of the Owners, the Commission recognized in *1841 Columbia Rd.* that the standards applicable to a substantial rehabilitation were more strict than those involved in a capital improvement. The Commission noted that "where a tenant is exposed in a substantial rehabilitation petition to a maximum rent increase of 125%, the Council articulated in even greater detail that the Rent Administrator must consider the interest of the tenants as measured by the impact of the rehabilitation on them and the existing condition of the housing accommodation." It then expressly declined to "transport" the substantial rehabilitation standards to the capital improvement sections of the Act. *Id.* at 7, n. 3 (emphasis original).

Accordingly, I conclude that Housing Provider's petition should be granted. I have approved costs for substantial rehabilitation totaling $2,246,387, more than 100% of the assessed value of $1,869,000.

B. The Permissible Rent Increase

The amount of by which a Housing Provider may increase rents upon the granting of a petition for substantial rehabilitation is governed by 14 DCMR 4212.10:

> The amount of a rent ceiling increase that a housing provider may take and implement pursuant to a final order of the Rent Administrator on a substantial rehabilitation petition shall be as follows:
>
> (a) The amount which authorizes rent increases sufficient to repay a loan in the principal amount of the cost of the approved rehabilitation over the amortization period and at the rate of interest documented by the housing provider in a *bona fide* loan commitment agreement with a lender; or
>
> (b) In the absence of a loan commitment agreement, over an amortization period of two hundred forty (240) months at the rate of interest equal to two (2) points above the average monthly bank prime loan rate established by the Federal Reserve Board in Publication H-15, Selected Interest Rates, for the week in which the substantial rehabilitation petition is filed; provided that the amount of the rent ceiling shall not exceed one hundred twenty-five percent (125%) of the rent ceiling at the time the petition is filed.

Although Housing Provider argues in its post hearing memorandum the loan here is amortized, the loan commitment letter itself characterizes the loan as non-amortized. PX 100, Tab 13. The Owners' managing partner acknowledged, on cross-examination, that the loan was not amortized. Moreover, the balloon loan, which made no provision for payment of principal until its maturity date, did not conform to the usual definition of amortization as "[t]he act or

result of gradually extinguishing a debt, such as a mortgage, usu[ally] by contributing payments of principal each time a periodic interest payment is due." Black's Law Dictionary (8th ed. 2004). *Cf. Carillon House Tenants' Assoc. v. D.C. Rental Hous. Comm'n*, 793 A.2d 461, 467 (D.C. 1982) ("to 'amortize' means to liquidate (a debt, such as a mortgage) by installment payments"). Therefore the 240 month amortization period of subsection (b) applies to Housing Provider's loan here.

Rent ceilings were abolished by the Rent Control Reform and Amendment Act of 2006, which amended the Rental Housing Act of 1985 to provide that permissible rent ceilings would be based on the present rent charged for a housing unit rather than the rent ceiling. *See* 53 D.C. Reg. 4489 (Jun. 23, 2006). The Rental Housing Commission has not amended its rules to reflect the 2006 amendment, but I will interpret 14 DCMR 4212.10 in light of the amendment to refer to the rent charged rather than the rent ceiling.

It follows that Housing Provider's allowable costs of $2,246,387 are to be amortized over a period of 240 months at a rate of interest two points above the bank prime loan rate established in Publication H-15 as of the date the petition was filed, March 28, 2007. I will take official notice that the appropriate bank prime loan rate is 8.25%.[8] It follows that Housing Provider cost is to be amortized at an interest rate of 10.25% for 240 months. The Housing Provider's permissible monthly rent increase for the entire Building is $22,052.[9]

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[8] *See* http://www.federalreserve.gov/releases/h15/20070402. Any party who disputes this determination may file a motion to show evidence to the contrary within ten days of service of this Final Order. D.C. Official Code § 2-509(b).

[9] I have calculated the permissible aggregate rent increase on two amortization calculators available on the worldwide web: http://ray.met.fsu.edu/cgi-bin/amortize; and http://realestate.yahoo.com/calculators/amortization.html. Any party who disputes this determination may file a motion to show evidence to the contrary within ten days of service of this Final Order.

The Owners' Rent Adjustment Schedule shows that the present aggregate monthly rentals in the building total $39,167. PX 100, Tab 2 (Rent Adjustment Schedule). The permissible increase, $22,052, is 64% of the present rent roll. It follows that, once the substantial rehabilitation is completed, Owners may increase the rent for each of the Building units by 64%. Appendix B, below, reflects the permissible increase for each of the units.

IV. Conclusion

For the reasons I discuss above, I conclude that the Owners' petition for substantial rehabilitation should be granted. Although the tenants would be inconvenienced, required to pay higher rents, and in some cases forced to move out, the tenants would benefit from the renovation by living in units that were more safe, modern, and comfortable than the timeworn units they live in now. The Rental Housing Commission and Court of Appeals have made it clear that the tenants' concerns are not conclusive and must be balanced against the Housing Provider's right to maintain the Building in keeping with contemporary standards.

V. Order

Accordingly, it is that **11th** day of **January, 2008:**

ORDERED, that the petition for substantial rehabilitation is **GRANTED**, and it is further

ORDERED, that Housing Provider may recover possession of the rental units for substantial rehabilitation in accord with D.C. Official Code § 42-3505.01(h); and it is further

ORDERED, that, upon completion of the substantial rehabilitation, and subject to the requirements of the Rental Housing Regulations, Housing Provider may implement a rent

adjustment increasing the rent of each of the units by 64% as set forth in Appendix B below; and it is further

ORDERED, any party may file a motion for reconsideration under 1 DCMR 2937 within ten days of service of this Final Order; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Final Order are set forth below.

January 11, 2008

_____/s/_____
Nicholas H. Cobbs
Administrative Law Judge

APPENDIX A

Exhibits in Evidence

Exhibit No.	Pages	Description
Petitioner		
PX 100	428	Notebook containing petition and tabbed supporting exhibits
PX 102	2	Building permits
PX 103	4	Interior demolition plans
PX 104	26	Interior renovation plans
PX 105	7	Exterior renovation plans
PX 106	1	Building permit
PX 107	1	Email confirmation of loan extension
PX 108	20	Maintenance logs

APPENDIX B

Permissible Rent Increases

Unit No.	Present Rent	Rent Increase	New Rent
11	$1,337	$753	$2,090
12	$1,600	$901	$2,501
14	$1,430	$805	$2,235
15	$676	$381	$1,057
21	$1,394	$785	$2,179
22	$1,751	$986	$2,737
23	$1,322	$744	$2,066
24	$1,950	$1,098	$3,048
31	$1,912	$1,077	$2,989
32	$738	$416	$1,154
33	$1,314	$740	$2,054
34	$1,268	$714	$1,982
41	$1,699	$957	$2,656
42	$2,026	$1,141	$3,167
43	$1,623	$914	$2,537
44	$2,230	$1,256	$3,486
51	$2,124	$1,196	$3,320
52	$1,423	$801	$2,224
53	$1,148	$646	$1,794
54	$1,472	$829	$2,301
61	$3,000	$1,689	$4,689
62	$1,412	$795	$2,207
63	$1,318	$742	$2,060
64	$3,000	$1,689	$4,689